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No. 88-2064

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

DELTA AIR LINES, INC.,
Petitioner,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
DONALD R. HAZELTINE, and EARL E. MEECH,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Court of Appeals correctly reject the Company's contention that a System Board established pursuant to the Railway Labor Act was without jurisdiction in any respect to consider a grievance over the Company's denial of disability benefits to a discharged pilot where that denial was based on the Company's refusal to comply with a prior award in which the Board, composed of two Union and two Company members, unanimously sustained the pilot's discharge but eased his eligibility for benefits under the Company's disability plan?

2. Where another pilot alleged that he was improperly denied disability benefits under the Company's plan, basing his claim on provisions that appear in both the applicable collective bargaining agreement and the plan (which was also incorporated into the agreement by reference), did the Court of Appeals correctly conclude that the relevant portions of the plan were maintained pursuant to a collective bargaining agreement and the Company had otherwise failed to show "with positive assurance" that the System Board lacked jurisdiction to hear the grievance?

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT

A. The Collective Bargaining Agreement ("CBA")

As required by § 204 of the Railway Labor Act ("RLA"), 45 U.S.C. § 184, Delta Air Lines and the Air Line Pilots Association ("ALPA") established through collective bargaining a System Board of Adjustment. The stated purpose of the Board is to "adjust . . . and decide . . . disputes between any pilot covered by [the collective bargaining] Agreement and the Company growing out of grievances or out of the interpretation or application of

any of the terms of [the] Agreement." The Board consists of two members appointed by ALPA and two by Delta. Provision is made in the CBA for appointment of a neutral if Company and Union members are unable to resolve a matter. Decisions of the Board are final and binding. (Pet. App. A-3)

Section 26 of the CBA is captioned "Retirement, Disability, And Survivor Benefits," and sets forth provisions dealing with those subjects. Section 26.A specifies that the Company will pay the full cost of the Delta Pilots Disability and Survivorship Plan, "*such [P]lan . . . hereby incorporated by reference into this Agreement*" (emphasis added). CBA section 26.C states that "[a] pilot who becomes disabled prior to his normal retirement date shall be provided a monthly disability benefit from the Delta Pilots Disability and Survivorship Plan equal to fifty percent (50%) of his highest twelve (12) consecutive months of normal earnings during the last thirty-six (36) months of active service as defined in the Plan." (Pet. App. A-3)

B. The Delta Pilots Disability and Survivorship Plan

The Plan sets forth the conditions for payment of benefits and the basis for determining the amount. An Administrative Committee, all of whose members are appointed by the Company, is given both the responsibility for carrying out the Plan's provisions and the exclusive power to interpret Plan terms. The Plan states that "decisions of the Administrative Committee as to interpretation and application of the Plan shall be final." (Pet. App. A-4)

C. The Hazeltine Grievance

On July 24, 1984 Delta terminated pilot Donald Hazeltine's employment because of alleged misconduct at an airport security checkpoint. Although he had more than 15 years of service with Delta, he had been disciplined

on a number of occasions. During the year immediately preceding his discharge, Hazeltine had been suspended by Delta and required to seek psychiatric treatment for a personality disorder. (Pet. n. 9 at 6-7; Pet. App. A-4)

Hazeltine grieved his discharge, contending that the penalty was too harsh and that he should be placed on disability. The grievance was eventually submitted to the four-member System Board. On the one hand, the Board sustained Hazeltine's discharge. On the other hand, it concluded that "the grievant shall not be barred from making application for disability under the Delta Pilots Disability and Survivorship Plan; the Administrative Committee of the Plan shall not be barred from considering his application, and that . . . the Committee shall not be bound by the grievant's current employment status in making its determination." (Pet. App. A-5) Hazeltine was concerned that he would not be regarded as disabled under the Plan because he had not lost his FAA medical certification to fly as a commercial pilot at the time of his discharge. The Board's decision was thus favorable to him in the sense that it permitted him to claim benefits if he could make the requisite showing of disability under the Plan even after his discharge. This he did on July 18, 1985, when he applied for and was denied medical certification by the FAA. (*Ibid.*)

Notwithstanding the System Board's ruling on Hazeltine's grievance, the Administrative Committee denied his application for disability benefits, pointing out that he had held a first class medical certificate when he was discharged. Without mentioning the Board's award, the Committee insisted that "the onset of disability must occur during employment," and "no post termination benefits are available under the Plan." (Pet. App. A-5)

Hazeltine responded by filing another grievance, contending that Delta's refusal to provide him with disability benefits violated section 26.C and related sections of the

CBA. Delta denied the grievance and refused to submit it to a System Board on the ground that only the Administrative Committee has jurisdiction over applications for disability benefits. (Pet. App. A-5)

D. The Meech Grievance

After learning that Delta Captain Earl E. "Ed" Meech had been indicted by a federal grand jury on charges relating to an insurance fraud, Delta suspended him without pay. According to the Company, the charges called into question Meech's "judgment and integrity" and, in any event, preparation of a defense would divert him from his duties as a pilot. While on suspension, Meech aggravated a prior back injury severely enough so that an FAA-designated medical examiner concluded that he was physically unable to function as a pilot. Several months later, Meech was convicted on several of the pending criminal charges, whereupon Delta terminated him for cause on July 31, 1985. (Pet. App. A-6)

Prior to his termination, however, Meech had applied for long term disability benefits under the Delta Disability Plan. The Company denied Meech's claim because his disability did not occur within 30 days from the date he was suspended. Although the Plan itself did not include this limitation, Delta asserted that the CBA did and that the Plan had been interpreted to be consistent with the CBA.[1] (Pet. App. A-6) Meech appealed the denial of his claim to the Plan's Administrative Committee. The Committee ruled that Meech was not entitled to benefits. But the reason it gave was that, despite the attestation of the FAA's medical examiner that Meech was disabled,

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[1] The CBA did not, in fact, state that for a suspended pilot to be eligible for *long term* disability benefits the disability had to have occurred in the initial 30 days of the suspension. What it actually provided was that for *short term* weekly disability benefits the disability had to occur within the first 30 days of the suspension. (Pet. App. A-6-7)

Meech did not apply for—and, hence, was not technically denied—renewal of his first class medical certificate by the FAA until after his termination. (Pet. App. A-7) Meech thereafter filed a grievance under the CBA, contending that the denial of his benefits claim violated section 26.C and related sections of the agreement. Delta denied the grievance. When ALPA sought to submit Meech's grievance to the System Board, Delta gave the same response as it did regarding the Hazeltine grievance: that the Board lacked authority over such matters. ALPA then sued to compel submission of both grievances to the Board (Pet. App. A-7)

E. The District Court's Decision

In a brief one page order granting Delta's motion for summary judgment, the District Court found determinative the Plan provisions which conferred on the Administrative Committee the exclusive power to interpret the Plan and to decide all questions concerning eligibility for Plan benefits. Because the CBA incorporated the Plan by reference, the Court agreed with Delta that the System Board lacked jurisdiction to hear the Hazeltine and Meech grievances. (Pet. App. B-1)

F. The Decision Of The Court Of Appeals

The D.C. Circuit reversed, holding that ALPA's motion for summary judgment should have been granted. (Pet. App. A-19) With respect to the Hazeltine grievance, the Court concluded that "[e]ven if no other disputes over eligibility for Plan benefits were subject to arbitration, we think it clear that the facts of Hazeltine's grievance require the System Board to entertain his claim." (Pet. App. A-12) In essence, the Board's resolution of Hazeltine's first grievance effectively incorporated into the CBA "a 'Hazeltine clause' concerning the relevant criteria to determine *his* eligibility for disability benefits." (*Ibid.*) And "because the agreement now contains the equivalent of a collectively bargained term

arguably addressing Hazeltine's eligibility for disability benefits, his grievance is within the mandatory jurisdiction of the System Board." (Pet. App. A-13)

Regarding the Meech grievance, which was viewed as presenting a broader jurisdictional issue, the Court emphasized that "[t]he ALPA-Delta agreement doubly incorporated the relevant terms of the Plan: it purported to incorporate the whole Plan by reference, and it literally incorporated the terms relating to disability benefits." (Pet. App. A-16, footnote omitted) Hence, the Court concluded that Delta had "failed to offer 'positive assurance'" that at least that part of its disability plan relevant to Meech's grievance "is entirely independent from the collective bargaining agreement" and thus not subject to the CBA's dispute resolution procedures. (Pet. App. A-13, A-16) The Court emphasized that it was not deciding "whether the System Board has jurisdiction over *all* appeals from denials of benefits by the Plan's Administrative Committee" (Pet. App. A-13, A-16 n. 4), or even that the Board could not defer to the Plan Committee. Rather,

> [t]he System Board might well determine that the exclusivity and finality language in the Plan means that all (or some portion) of disputes over the Plan's administration are not normally to be submitted to the System Board. That depends, of course, on how the System Board interprets the Plan's terms—including words like "exclusive" and "final"—which have been brought into its ambit by collective bargaining. The crucial point, it seems to us, is that it is up to the System Board to determine the relationship between the Plan administration and the Board with respect to those aspects of the Plan maintained pursuant to the collective bargaining agreement.

(Pet. App. A-19, footnote omitted)

REASONS FOR NOT GRANTING THE WRIT

Contrary to petitioner, the decision below does not unravel ERISA [2] (Pet. 10), is not in conflict with decisions in other circuits (Pet. 18), and is not at odds with the *Steelworkers Trilogy* [3] or *AT&T Technologies.* [4] Rather, the Court of Appeals simply applied established legal principles to the particular facts here to reach a result which is correct and which does not warrant the attention of this Court in any event.

I. THE SYSTEM BOARD CLEARLY HAD JURISDICTION TO HEAR THE SECOND HAZELTINE GRIEVANCE

Neither here nor below has the Company asserted that it would have been precluded by ERISA or the RLA from settling Hazeltine's grievance over his discharge by agreeing with ALPA to amend its Plan to pay him disability benefits. (Pet. App. A-12) The Court of Appeals concluded that the System Board's resolution of Hazeltine's grievance was the functional equivalent of just such a settlement and constituted a modification of the CBA through the collective bargaining process. (Pet. App. A-12-13) It follows that questions concerning the meaning and application of that modification are within the Board's jurisdiction in light of the broad grant of jurisdictional authority to the Board set forth in the CBA. *Supra*, pp. 1-2.

As the Court of Appeals pointed out, the Board is not required in hearing Hazeltine's second grievance to "in-

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[2] Employee Retirement Income Security Act of 1974, §§ 2 *et seq.*, 29 U.S.C. §§ 1001 *et seq.*

[3] *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[4] *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643 (1986).

terpret its prior decision in any particular way." (Pet. App. A-13) Delta is thus free to argue, as it did below, "that it was not the intention of the original Board decision to allow Hazeltine to obtain disability benefits regardless of his employment status at the time he was deemed disabled." (*Ibid.*) Conversely, Hazeltine can urge that the Board intended the easing of the standards for benefits eligibility in his situation to be a *quid pro quo* for upholding his discharge, that it was a "done deal" between Company and ALPA representatives, and that the Company should be required in some way to abide by its bargain; or, if not, the entire award should be set aside and the original grievance reheard.

The Court of Appeals recognized that these matters are properly for the System Board to decide. Delta has presented no persuasive basis for faulting the Court's analysis and concluding otherwise.

II. ERISA DOES NOT PRECLUDE, AND ALPA DID NOT WAIVE, SYSTEM BOARD JURISDICTION OVER GRIEVANCES BASED ON DISABILITY PROVISIONS IN THE COLLECTIVE BARGAINING AGREEMENT

Delta's underlying premise is that System Board jurisdiction over grievances concerning the denial of benefits claims by the Plan's Administrative Committee is at odds with ERISA. In other words, even if Delta and ALPA wanted to enter into such an arrangement and expressly so provide in their collective bargaining agreement and the Plan, under Delta's view they could not lawfully permit such multi-tiered review. There is no judicial support for this proposition. Nor is it likely there could be. ERISA itself does not limit the jurisdiction of a System Board. ERISA § 514(d), 29 U.S.C. § 1144(d); *Air Line Pilots Ass'n v. Northwest Airlines, Inc.*, 627 F.2d 272, 276 (D.C. Cir. 1980); *Bonin v. American Airlines, Inc.*, 621 F.2d 635, 638 (5th Cir. 1980), *cert. denied*, 471 U.S. 1005 (1985) (". . . ERISA was not intended to, nor did

it, preempt the mandatory arbitration provisions of the Railway Labor Act"). To be sure, the regulations implementing ERISA set forth procedures to be followed by plan administrators in reviewing benefit claims. 29 C.F.R. § 2560.503-1 (Pet. App. E-11-18). But these are plainly stated to be only the "minimum requirements" for fairness. *Id. at* § 2560.503-1(a)(1). The regulations also state that a collectively bargained grievance and arbitration procedure to which denied claims are subject will likewise satisfy the "minimum." *Id.* at § 2560.503-1 (b)(2)(i). However, there is nothing in the regulations that remotely suggests the procedures are mutually exclusive: *i.e.*, that claims cannot be subject to the sort of procedure specifically described in the regulations as well as further review through a grievance and arbitration procedure. Indeed, any interpretation of the regulations to this effect is implausible, given that one of the major concerns underlying the enactment of ERISA was that plan participants were not getting fair enough treatment, not that plans were being overly fair.[5]

Delta argues, however, that the System Board was deprived of jurisdiction over benefits claims in this case because the Plan provided that the Administrative Committee would have exclusive jurisdiction over such claims and the Plan was incorporated into the CBA by reference. The Court of Appeals was entitled to reject that argument, as it did, on two interdependent grounds. First,

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[5] Delta complains that multi-tiered review is "duplicative" and tends to engender "[c]onfusion and inconsistency." (Pet. 22-23) However, if the procedures are cumbersome, and thereby ineffective, a union and employer can always negotiate appropriate changes. Moreover, as the Court of Appeals stated, "the Plan's fiduciaries must act in accordance with rulings of the [System] Board as long as they are consistent with ERISA." And "[i]f an order of the Board is inconsistent with the fiduciary, disclosure, or other requirements of the statute, a participant, beneficiary, or fiduciary may bring an independent action under . . . Section 502 of ERISA, 29 U.S.C. § 1132 (1982)." (Pet. App. A-18)

incorporating the Plan into the CBA by reference made it a collectively bargained plan subject to the CBA's dispute resolution procedures. Second, insofar as the Plan provisions are actually replicated in the CBA, thus creating a "parallel structure [which] suggests that the key terms in the . . . dispute were products of negotiation and bargaining," the dispute is within the System Board's jurisdiction. (Pet. App. A-15-16)

Contrary to Delta (Pet. 20-21), the foregoing is not in conflict with the Fifth Circuit's decision in *Bonin v. American Airlines*. The plan in that case "significantly" provided that " 'neither the interpretation of the Plan nor its administration shall as such be within the jurisdiction' of the collective bargaining agreement." *Bonin*, 621 F.2d at 639. As the Court of Appeals in our case pointed out, "[t]his statement, combined with the apparent absence of indication in the collective bargaining agreement of an intent to incorporate the plan, led the [*Bonin*] court to conclude that the plan [in that case] was wholly independent." (Pet. App. A-11)[6]

Finally, Delta asserts that the Court of Appeals disregarded its obligation under *AT&T Technologies* and the *Steelworkers Trilogy* to resolve the "threshold question" of System Board jurisdiction over the Meech grievance. (Pet. 24-25) But the Court did resolve that question. Thus, at the very outset of its opinion, the Court stated unequivocally that "[t]he arbitrability question here is, in essence, an issue of contract interpretation, and we

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[6] Other cases in which, unlike our case, the evidence falls short of establishing that a plan was maintained pursuant to a collective bargaining agreement are similarly distinguishable. *E.g., Printing Specialties, Local 680 v. Nabisco Brands, Inc.*, 833 F.2d 102, 105 (7th Cir. 1987) (only a "passing reference" to the plan in the collective bargaining agreement); *RCA Corp. v. Local 241, International Fed. of Prof. & Tech. Engineers*, 700 F.2d 921, 927 (3d Cir. 1983) (only a "mere mentioning" of the plan in the agreement).

thus think *AT&T* applies." (Pet. App. A-9) The Court also accurately stated the *AT&T* test: in order to avoid submission of the Meech and Hazeltine grievances to arbitration there must be "positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." (*Id.*, quoting *AT&T*, 475 U.S. at 650) The Court concluded that such "positive assurance" was lacking here because there was no express waiver such as contained in *Bonin, supra*, and because of the double incorporation of relevant Plan terms into the CBA. Hence, the grievances were properly deemed arbitrable.

The Court also took pains to explain that it was not imposing its contract interpretation work upon the Board: the ultimate decision on benefit claims was left to the Board, including the authoritative interpretation of the contract's provisions for finality and exclusivity. Delta insists that this is a threshold jurisdictional question which only a court can determine. But there is nothing in *AT&T*, other judicial precedent, or in logic which required the Court of Appeals to accept that view. Under ordinary principles of contract interpretation, the broad grant of jurisdiction conferred on the System Board by the CBA (*supra*, pp. 1-2) suffices to authorize the Board to "determine the relationship between the Plan administration and the Board *with respect to those aspects of the Plan maintained pursuant to the collective bargaining agreement.*" (Pet. App. A-19, emphasis supplied) The Court of Appeals did not duck the jurisdictional issue presented by the finality and exclusivity language of the Plan. Rather, the thrust of its opinion is that, especially in light of the CBA provisions which pointed in a different direction, this was not enough under the *AT&T* standard to prove that the parties intended to oust the System Board of jurisdiction. There is no sound reason for this Court to inquire into the merits of that holding, much less upset it.

CONCLUSION

For the reasons set forth above, Respondents request that the petition for certiorari be denied.

Respectfully submitted,

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